IN THE

Supreme Court of the United States

OCTOBER TERM, 1963.

No. 457

GEORGE WOJCIK,

Petitioner,

vs.

BURTON PALMER, ET AL.,

Respondents.

BRIEF OF BURTON PALMER, CASIMIR CWIKLINSKI AND AUGUSTINE J. BOWE, RESPONDENTS, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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THE DARTNELL-MIEHER PRINTING COMPANY, CHICAGO

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The Respondent Burton Palmer is a trial assistant in the Municipal Court of Chicago, before whom the traffic ticket charge against Petitioner came for a preliminary hearing. The Respondent Casimir Cwiklinski is an associate judge of the Municipal Court, and the traffic ticket charge is now pending before him. The Respondent Augustine J. Bowe is chief justice of the Municipal Court. The other Respondents to the Petition are represented by other counsel.

QUESTIONS PRESENTED

Petitioner recites nine "questions presented" in great detail (Pet. 2, 3) but they can be reduced to the following:

1. Is it a denial of due process for a state court to try ordinance violation cases under civil rules of procedure rather than criminal rules?

2. Does a District Court have jurisdiction, under the Civil Rights Act or the Declaratory Judgment statute, to control and direct, by injunction or otherwise, the actions and decisions of a state court judge in the trial of an action lawfully pending in the state court before such judge?

These Respondents have refrained in this action from disputing the first of the above recited questions. They contend that the second question was properly answered in the negative by the decisions below.

STATEMENT OF THE CASE

The Chicago Traffic ordinance which Petitioner was alleged to have violated is as follows (Record, 9):

> "Left turns on two-way roadways. At any intersection where traffic is permitted to move in both directions on each roadway entering the intersection, an approach for a left turn shall be made in that portion of the right half of the roadway nearest the center line thereof and by passing to the right of such center line where it enters the intersection *or on that portion of the roadway that may be specifically designated for such purpose by appropriate markings*, and after entering the intersection the left turn shall be made so as to leave the intersection to the right of the center line of the roadway being entered. Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection."

Petitioner says the ordinance is "almost a verbatim re-enactment of an Illinois statute" (Pet. 6). The statute referred to by Petitioner is par. (b) of Sec. 150 Chap. 95½ Illinois Revised Statutes, 1961 (Rec. 44), which differs from the ordinance in that the statute does not contain the words italicized in the text of the ordinance as printed above. The different provision of the ordinance is readily accounted for in view of city traffic congestion which does not exist elsewhere in the state. Petitioner has not been charged with violation of the state statute, and there is nothing in the record intimating that he will be so charged.

Nowhere in the amended complaint or in his other pleadings and briefs has Petitioner denied that he is guilty of the charge of violating the ordinance; nor has he alleged that he is without means to pay the maximum possible fine of $200 provided for by the ordinance. Hence he is not threatened with imprisonment.

In his brief in the Court of Appeals, as noted in that Court's opinion (Petition, page 6a), Petitioner said, at pp. 47 and 48:

> "This plaintiff, had he chosen to do so, could easily have gotten his [traffic ordinance violation] case dismissed on one of several grounds; nor would the City of Chicago be averse to . . . giving the plaintiff his driver's license back and calling it a day."

Petitioner has not alleged that these Respondents, judges sitting at trial of cases in the Municipal Court, have threatened to deprive him of any constitutional right, nor has he alleged that these Respondents have expressed any judgment or opinion contrary to his theory that the trial of an ordinance violation charge should be conducted according to criminal rather than civil procedure.

On page 5 of the Petition it is stated that Petitioner has obtained continuances of his traffic ticket case "with the

cooperation of defendants,'" and on page 32, in a "special note," he again refers to the continuances as "a continuing manifestation of good will toward Petitioner in this action"; from this it might be inferred that these Respondents have encouraged Petitioner to carry on this litigation, or that they believe there is merit in his contentions. Such is not the case. The continuances that have been granted in the Municipal Court were simply a manifestation of that Court's respect for the federal courts and for the right of any litigant, no matter how mistaken or misguided, to seek review of any judicial decision, even one involving a traffic ticket.

REASONS FOR DENYING THE WRIT.

I.

The District Court Was Without Jurisdiction of the Subject-Matter of the Amended Complaint by Reason of the Provision of 28 U. S. C. 2283.

The text of 28 U. S. C. 2283 is as follows:

> "A court of the United States may not grant an injunction to stay proceedings in a State Court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

The application of this statute to the facts herein is discussed in the opinion of the Court of Appeals (Pet. p. 6a). In the Petition 28 U. S. C. 2283 is referred to on pages 13, 22, 23 and 26, where the argument seems to be that the injunction sought by Petitioner against these Respondents was not an "injunction to stay proceedings." But the amended complaint did pray for an injunction forever restraining defendants from applying the customs and precedents "which have been declared unconstitutional" in the trial of the plaintiff for the ordinance violation (Rec. 74). Thus the injunction would have stayed and prevented all proceedings in the Municipal Court except those not in conflict with the District Court's decree. It cannot be reasonably denied that such an injunction would be an "injunction to stay proceedings."

II.

A Federal Court Will Not Enjoin State Court Criminal Prosecutions or State Court Prosecutions for Violations of Municipal Ordinances.

III.

Petitioner Has a Full and Adequate Remedy at Law in the State Courts.

tioner must ask for a jury trial, tender instructions applicable to a criminal case, have them refused, be found guilty, and preserve a record for appeal. An acquittal would moot the issue."

We submit that there is nothing indirect about the procedure outlined by Petitioner, and he ought to be required to follow it, in the interest of orderly administration of justice.

Upon analysis of Petitioner's argument on this point, it appears that he prefers to pursue his remedy in the federal courts because he is apprehensive that the traffic ticket case might be decided in his favor by the Illinois Courts.

If there is any merit to Petitioner's contention that the trial of a municipal traffic ticket charge must, under the U. S. Constitution, be conducted according to the criminal rules of pleading and procedure followed in felony cases, that merit ought to be recognized by the Illinois courts, and if they wrongly fail to recognize it he has a remedy by way of writ of certiorari in this court.

We therefore ask that the writ of certiorari be denied.

Respectfully submitted,

BURTON PALMER,
CASIMIR GWIRTZMAN,
AUGUSTINE J. RAWLEY,
Respondents

By JOSEPH F. EDWARD,
JOHN D. CASEY,
Their attorneys